

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

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FEDERAL COMMUNICATIONS COMMISSION
DIVISION OF SECRETARY

In the Matter of

Amendment to the Commission's
Regulatory Policies Governing
Domestic Fixed Satellites and
Separate International
Satellite Systems

IB Docket No. 95-41

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TO: The Commission

REPLY COMMENTS OF HOME BOX OFFICE

Home Box Office, a Division of Time Warner Entertainment Company, L.P. ("HBO"), by its undersigned counsel and pursuant to Section 1.415(a) of the Federal Communications Commission's (the "Commission") rules, hereby submits its reply comments in response to the comments filed on the Commission's Notice of Proposed Rulemaking ("NPRM") in this proceeding.¹

The Comments in this proceeding demonstrate substantial support for the Commission's proposal to eliminate the distinctions between its Transborder and Separate Systems policies and,

¹ Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, Notice of Proposed Rulemaking, IB Docket No. 95-41, FCC 95-146 (Apr. 25, 1995) ("NPRM").

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consequently, to place all U.S.-licensed geostationary fixed-service satellites ("FSS") under a single regulatory regime.² Virtually every one of the commenters, however, recognizes, as does HBO, that in moving towards further liberalization of the U.S. domestic and international satellite markets, the Commission must remain sensitive to several issues, in particular, issues related to intellectual property, orbital space allocation, technical coordination, and competition. HBO believes these issues should be addressed at the earliest opportunity.

HBO remains concerned that if the limited numbers of prime domestic orbital positions are devoted more and more to international services, a shortage of orbital positions and satellite services available for domestic users could develop. The Commission should, as a fundamental part of this proceeding, reaffirm that the U.S. domestic arc is to be used first and foremost to provide domestic communications services. HBO has already suggested in its initial Comments ways to ensure that domestic needs are given priority. Whatever method the Commission chooses, it must remain cognizant of the policy that the domestic

² See, e.g., Comments of Keystone Communications Corporation; Comments of WorldCom, Inc.; Comments of COMSAT Corporation; Comments of W.L. Pritchard & Co.; Comments of ESATEL Communications, Inc.; Comments of Hughes Communications Galaxy Inc.; Comments of the Motion Picture Association of America, Inc.; Comments of Guam Telephone Authority; Comments of ICG Wireless Services, Inc.; Comments of Westinghouse Broadcasting Company; Comments of GE American Communications, Inc.; Comments of Rockwell International Corporation; Comments of Columbia Communications Corporation; Comments of Orion Networks Systems, Inc.; Comments of General Communication, Inc.

arc is a resource to be devoted primarily to the fulfillment of domestic communications requirements. HBO agrees with the thrust of PanAmSat's comments that the Commission should create a mechanism by which the Commission could ensure that the needs of domestic users are met before capacity is diverted to the international market.³

To the extent non-U.S.-licensed satellites are permitted to provide domestic satellite services, such authorization should be subject to reciprocal treatment being accorded by the relevant foreign governments to U.S. entities in the non-U.S. licensees' home markets.⁴ In addition, the Commission should ensure that non-U.S.-licensed satellites which are ultimately allowed to serve the domestic U.S. market are subject to all technical standards and coordination procedures, including 2° spacing, to which U.S. satellite licensees are uniformly subject. HBO shares the commenters' view that increased interference and performance degradation could easily occur if non-U.S. licensees were exempted

³ See Comments of PanAmSat Corporation, at 6. One indication of a potential increased demand on the U.S. arc comes from the comments of Mexican entities, who suggest that the Trilateral Agreement among Mexico, Canada and the United States be renegotiated to award more positions to Mexico. See Comments of Telecomunicaciones de Mexico, at 8; Comments of the Secretary of Communications and Transportation of the United States of Mexico, at 11.

⁴ See, e.g., Comments of Columbia Communications Corporation; Comments of AT&T Corporation; Comments of Rockwell International Corporation; Comments of Orion Network Systems, Inc.; Comments of GE American Communications, Inc.

from the more rigorous technical specifications generally imposed by the Commission on domestic licensees.⁵

There is general support for HBO's view that earth stations licensed for communication with ALSAT should be permitted to communicate with all U.S.-licensed satellites for both domestic and international transmissions.⁶ There should be no distinction between earth stations communicating with domestic fixed and separate systems satellites, particularly in light of the proposal to eliminate the regulatory distinction between domestic fixed and separate systems satellites.

Many commenters express strong opposition to allowing COMSAT to provide domestic service using Intelsat or Inmarsat capacity.⁷ HBO continues to believe that it would not be in the public interest to allow COMSAT to use Intelsat's capacity to provide

⁵ See, e.g., Comments of Hughes Communications Galaxy, Inc., at 22; Comments of AT&T Corporation, at 19; Comments of Orion Network Systems, Inc., at 11; Comments of General Communications, Inc., at 5.

⁶ See, e.g., Comments of WorldCom, Inc., at 3; Comments of Washington International Teleport, at 3; Comments of Orion Network Systems, Inc.; Comments of W.L. Pritchard, at 4; Comments of ESATEL Communications, Inc., at 2; Comments of Capital Cities/ABC, Inc., at 14; Comments of Hughes Communications Galaxy, Inc., at 19; Comments of Westinghouse Broadcasting Company.

⁷ See, e.g., Comments of PanAmSat Corporation, at 8; Comments of Orion Network Systems, Inc., at 4; Comments of GE American Communications, Inc., at 13; Comments of Columbia Communications Corporation, at 8.

domestic service at the risk or expense of depleting scarce inter-country capacity. In any event, the question of COMSAT's participation in the domestic satellite arena is more appropriately addressed in a separate proceeding.⁸

The record in this proceeding also demonstrates support for relieving U.S.-licensed satellite operators of any obligation to provide satellite capacity on a common carrier basis.⁹ HBO agrees that the rationale for imposing such an obligation (and conversely, the rationale for treating separate systems as non-common carriers) no longer holds true. Indeed, true regulatory parity dictates that FSS providers be allowed to elect, at their option, whether to provide service on a common carrier or non-common carrier basis.

HBO sympathizes, however, with Capital Cities/ABC, Inc., et al.'s and General Communication, Inc.'s concern regarding the continued availability of certain satellite capacity at reasonable rates, especially with respect to occasional video services used by many major programming companies.¹⁰ Although the domestic satellite services experience typical supply/demand cycles, when demand exceeds supply, occasional services are usually the first

⁸ See, e.g., Comments of IDB Mobile Communications, Inc., at 1; Comments of WorldCom, Inc., at 4; Comments of TRW, Inc., at 2.

⁹ See, e.g., Comments of PanAmSat Corporation, at 8; Comments of GE American Communications, at 4; Comments of AT&T Corporation, at 10; Comments of Orion Network Systems, Inc., at 9; Comments of Hughes Communications Galaxy, Inc., at 17.

¹⁰ Comments of Capital Cities/ABC, Inc., et al., at 12; Comments of General Communication, Inc., at 3.

to be affected. For example, in light of the current shortage of domestic C-Band capacity, HBO is seeing dramatic increases in occasional service prices. Effective, July 1, 1995, some suppliers are raising the hourly rates for prime time occasional video service by more than 150 percent. Because of these generally cyclical events, HBO believes that careful monitoring by the Commission may be appropriate to ensure that the needs of the public are adequately served, and that service providers do not take advantage of temporary capacity shortages to raise prices unreasonably.

Finally, HBO concurs with the concerns expressed by Capital Cities/ABC, Inc. and Motion Picture Association of America, Inc. that the enlargement of the footprints of FSS satellites that carry programming, and of direct broadcast satellites, so that these satellites may serve international markets, may exacerbate the already serious problem of unauthorized reception of copyrighted programming.¹¹

For all these reasons and those set forth in HBO's Comments, HBO respectfully urges the Commission to implement the general components of its proposed new regulatory system for U.S.-licensed satellites, but to take steps to address the intellectual property, orbital space allocation, technical coordination,

¹¹ See Comments of Capital Cities/ABC, Inc., et al., at 3; Comments of Motion Picture Association of America, Inc., at 2.

competitive, and other issues posed by the Commission's proposed liberalization policy.

Respectfully submitted,

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June 23, 1995

CERTIFICATE OF SERVICE

I, Jette Ward, a secretary with the law firm of Reed Smith Shaw & McClay, hereby certify that on this 23rd day of June, 1995, a true and correct copy of the foregoing **"REPLY COMMENTS OF HOME BOX OFFICE"** was sent via U.S. first-class mail, postage prepaid, or hand delivered, to the following:

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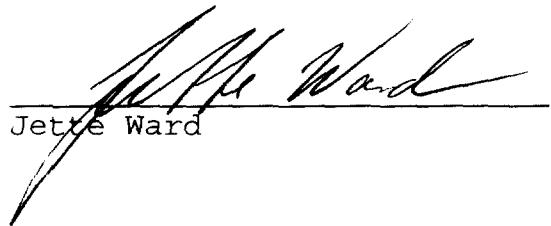
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